

DOCUMENT RESUME

03024 - [A2153260]

[Inclusion of Offer in Competitive Range]. B-188732. July 28, 1977. 2 pp.

Decision re: Quad Systems, Inc.; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law I.
Budget Function: General Government: Other General Government (806).

Organization Concerned: National Aeronautics and Space
Administration: Goddard Space Flight Center, Greenbelt, MD;
Potomac Marine & Aviation, Inc.

Authority: 10 U.S.C. 2304(g). 4 C.F.R. 20. B-184176 (1975). 48
Comp. Gen. 417. 48 Comp. Gen. 427. 49 Comp. Gen. 309.

The protester alleged that the low bidder's original proposal was deficient in a major respect and that it was unfair to allow them an opportunity to upgrade their proposal. The contracting officer's determination to include an offer in the competitive range will not be questioned in view of the contracting officer's discretion in matters where the offeror was permitted to clarify but not to submit a completely new proposal. (Author/SC)

Michael Gale
Proc. I

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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-188732

DATE: July 28, 1977

MATTER OF: Quad Systems, Inc.

DIGEST:

Contracting officer's determination to include offer in competitive range will not be questioned in view of contracting officer's discretion in such matters where offeror was permitted to clarify but not to submit completely new proposal.

Quad Systems, Inc. (QSI), protested the National Aeronautics and Space Administration (NASA) award to Potomac Marine & Aviation, Inc. (Potomac), under request for proposals (RFP) 5-87917-180 issued by Goddard Space Flight Center for fabrication and delivery of 25 speaker monitor amplifiers.

QSI and Potomac both submitted proposals under the RFP. Potomac was the low offeror. After discussions and best and final offers, Potomac remained the low offeror and award was made to it.

QSI protested the award. A contracting agency report on the protest was obtained and QSI was provided an opportunity to comment on the report in accordance with the Bid Protest Procedures, 4 C.F.R. part 20 (1977). In its letter of May 25, 1977, commenting on the report, QSI stated that there is only one key issue in the protest and that is whether Potomac's original proposal was deficient in a minor or major respect. QSI states that, if it was the latter situation, it was unfair to allow Potomac an opportunity to upgrade its proposal.

Negotiations, with an opportunity to revise proposals, must be conducted with all offerors in the competitive range, price and other factors considered. 10 U.S.C. § 2304(g) (1970). An offer is in the competitive range if there is a real possibility that it can be improved, without a complete redo, to the point where it becomes the most acceptable. Hydrosystems, Inc., B-184176, November 28, 1975, 75-2 CPD 358. Whether in a given case the offer is in the competitive range is decided by the contracting officer and his determination will be sustained absent a clear showing of abuse of discretion. 49 Comp. Gen. 309 (1969). While

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it is true that Potomac was asked for certain clarifications in the course of negotiations, it was not asked or permitted to submit an entirely new proposal. In the circumstances we find no basis to question the contracting officer's determination to include Potomac's offer in the competitive range.

Whether Potomac's initial proposal contained either major or minor deficiencies is not significant. In Frequency Electronics, Inc., B-178164, July 5, 1974, 74-2 CPD 8, we stated:

"* * * it is conceivable, and for that matter very likely, that a proposal might not be technically acceptable when first submitted or might be considered inferior to other proposals, but susceptible of being made technically acceptable.
* * *"

However, we stated further:

"* * * One of the purposes of a negotiated procurement is to discuss deficiencies in a proposal to determine if such deficiencies can be corrected. The term 'negotiation' generally implies a series of offers and counteroffers until a mutually satisfactory agreement is concluded by the parties. 48 Comp. Gen. 417, 427 (1966). * * *"

Thus, we are unable to conclude that it was improper for the contracting agency to allow Potomac to correct the deficiencies in its original proposal during the course of discussions.

Accordingly, the QSI protest is denied.


Deputy Comptroller General
of the United States